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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22 and 52

[FAR Case 2019-002; Docket No. FAR-2019-0004, Sequence No. 1]

RIN 9000-AN85

Federal Acquisition Regulation: Recreational Services on Federal Lands

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a Department of Labor (DOL) rule, which exempts certain contracts for seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands from an Executive Order minimum wage.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before **[Insert date 60 days**

after date of publication in the FEDERAL REGISTER to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2019-002 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2019-002". Select the link "Comment Now" that corresponds with "FAR Case 2019-002". Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2019-002" on your attached document.

- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Lois Mandell, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite "FAR Case 2019-002" in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Funk,
Procurement Analyst, at 202-357-5805 or kevin.funk@gsa.gov
for clarification of content. For information pertaining
to status or publication schedules, contact the Regulatory
Secretariat Division at 202-501-4755. Please cite "FAR
Case 2019-002."

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to
implement a DOL rule published in the Federal Register at
83 FR 48537 on September 26, 2018. The DOL rule
implemented Executive Order (E.O.) 13838, Exemption From
Executive Order 13658 for Recreational Services on Federal
Lands (May 25, 2018, published June 1, 2018, 83 FR 25341),
which exempted certain contracts and contract-like
instruments from the requirements of E.O. 13658,
Establishing a Minimum Wage for Contractors. E.O. 13658
raised the hourly minimum wage paid to workers performing
on or in connection with covered Federal contracts to: (i)
\$10.10 per hour, beginning January 1, 2015; and (ii)
beginning January 1, 2016, and annually thereafter, an
amount determined by the Secretary of Labor in accordance
with the E.O. As of January 1, 2019, E.O. 13658 raised
minimum wage to \$10.60 per hour (83 FR 44906).

E.O. 13838 exempts contracts or contract-like instruments entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands from the requirements of E.O. 13658; lodging and food services are not exempted.

The purpose of this rule is to make a conforming change in the FAR. This proposed rule implements E.O. 13838 by amending FAR 22.1903(b)(2) and FAR clause 52.222-55(c)(2) to conform to the DOL rule by adding seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands to the list of exemptions.

II. Discussion and Analysis

This rule proposes to amend the FAR to be consistent with the DOL final rule as follows:

- Adds a definition of "seasonal recreational services" at FAR 22.1901 and 52.222-55, Minimum Wages Under Executive Order 13658.
- Adds seasonal recreational services or seasonal equipment rental for the general public on Federal lands to the list of exceptions from the policies and procedures to implement E.O. 13658 and DOL's

implementing regulations at FAR 22.1903 and 52.222-55. Lodging and food services are not exempted.

- Makes conforming changes at 52.212-5, 52.213-4, and 52.244-6.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule does not add any new provisions or clauses. The rule does not change the applicability of existing provisions or clauses to contracts at or below the SAT and contracts for the acquisition of commercial items, including COTS items. The FAR clause at 52.222-55, Minimum Wages Under Executive Order 13658, is prescribed for use in contracts valued at or below the SAT and for the acquisition of commercial items. Under this rule, acquisitions below the SAT or for commercial items involving seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands would be exempt from FAR clause 52.222-55. Lodging and food services are not exempted.

IV. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action, and therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13371

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because the rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

This action is necessary to implement a DOL rule dated September 26, 2018, which implemented E.O. 13838, Exemption from Executive Order 13658 for Recreational Services on Federal Lands (May 25, 2018, published June 1,

2018, 83 FR 25341). E.O. 13658 made contracts or contract-like instruments entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands exempt from the minimum wage requirements under E.O. 13658, dated February 12, 2014; lodging and food services are not exempted.

The objective of this rule is to make a conforming change in the FAR to conform to the DOL rule to implement E.O. 13838, dated September 26, 2018. This rule simply provides a conforming amendment to FAR 22.1903(b)(2)(iii) and FAR clause 52.222-55(c)(2)(ii) to conform to the DOL rule by adding seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands to the list of exemptions. Lodging and food services are not exempted. This action is limited to implementing E.O. 13838 by inserting into the FAR the language that E.O. 13838 inserted into E.O. 13658. The legal basis for these changes is E.O. 13838.

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule only applies to contracts for seasonal recreational services or seasonal recreational equipment rental. Lodging and food services are not exempted. On average for fiscal years 2016-2018, there were 229 awards reported on an annual basis in the Federal Procurement Data System (FPDS) for seasonal recreational services and seasonal recreational equipment rental, of which 153 were awarded to small business entities. The FPDS data could not isolate which of the awards were for services or rentals on Federal lands, so the average number of awards for seasonal recreational services or seasonal recreational equipment rental to the general public on Federal lands could be even lower. Furthermore, this rule is expected to have a beneficial impact on small businesses as it relaxes the burden on small businesses.

There are no reporting, recordkeeping, or other compliance requirements in this rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules. DoD, GSA, and NASA were unable to identify any alternatives to the rule that would reduce the impact on small entities and still meet the requirements of the DOL rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be

obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2019-002), in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 22 and 52

Government procurement.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR parts 22, and 52 as set forth below:

1. The authority citation for 48 CFR parts 22, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT

ACQUISITIONS

2. Amend section 22.1901 by revising the heading and adding in alphabetical order the definition "Seasonal recreational services" to read as follows:

22.1901 Definitions.

Seasonal recreational services, as used in this subpart, means services that include river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps.

* * * * *

3. Amend section 22.1903 by—

a. In paragraph (b)(2)(ii)(C), removing the period and adding "; or" in its place; and

b. Adding paragraph (b)(2)(iii).

The addition reads as follows:

22.1903 Applicability.

* * * * *

(b) ***

(2) * * *

(iii) Seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands, except for lodging and food services associated with seasonal recreational services, in accordance with Executive Order 13838, Exemption from Executive Order 13658 for Recreational Services on Federal Lands (83 FR 25341, June 1, 2018), as implemented by the U.S. Department of Labor regulations at 29 CFR 10.4(g).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.212-5 by—

- a. Revising the date of the clause;
- b. Removing from paragraph (c)(8) “(DEC 2015)” and adding “([DATE])” in its place;
- c. Removing from paragraph (e)(1)(xviii) “(DEC 2015)” and adding “([DATE])” in its place;
- d. Revising the date of Alternate II; and
- e. Removing from paragraph (e)(1)(ii)(P) of Alternate II “(DEC 2015)” and adding “([DATE])” in its place.

The revisions read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE

ORDERS—COMMERCIAL ITEMS ([DATE])

* * * * *

Alternate II ([DATE]). * * *

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5. Amend section 52.213-4 by—

a. Revising the date of the clause;

b. Removing from paragraph (a)(2)(viii) "(AUG 2019)" and adding "([DATE])" in its place; and

c. Removing from paragraph (b)(1)(ix) "(DEC 2015)" and adding "([DATE])" in its place;

The revision reads as follows:

**52.213-4 Terms and Conditions—Simplified Acquisitions
(Other Than Commercial Items).**

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TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL

ITEMS) ([DATE])

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6. Amend section 52.222-55 by—

a. Revising the date of the clause;

b. Adding to paragraph (a), in alphabetical order,
the definition "Seasonal recreational services";

c. In paragraph (c) (2) (ii) (A), removing the period at the end of the sentence and adding ";" in its place;

d. In paragraph (c) (2) (ii) (B), removing the period at the end of the sentence and adding "; and" in its place;

e. In paragraph (c) (2) (ii) (C), removing the period at the end of the sentence and adding "; or" in its place; and

f. Adding paragraph (c) (2) (iii).

The revision and additions read as follows:

52.222-55 Minimum Wages Under Executive Order 13658.

* * * * *

MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 ([DATE])

* * * * *

(a) Definitions. * * *

"Seasonal recreational services", as used in this clause, means services that include: river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps.

* * * * *

(c) (2) * * *

* * * * *

(iii) Seasonal recreational services or seasonal recreational equipment rental for the general public on Federal lands, except for lodging and food services

associated with seasonal recreational services, in accordance with Executive Order 13838, Exemption from Executive Order 13658 for Recreational Services on Federal Lands (83 FR 25341, June 1, 2018), as implemented by the U.S. Department of Labor regulations at 29 CFR 10.4(g).

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7. Amend section 52.244-6 by—

a. Revising the date of the clause; and

b. Removing from paragraph (c)(1)(xv) “(DEC 2015)”

and adding “([DATE])” in its place;

The revision reads as follows:

52.244-6 Subcontracts for Commercial Items.

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SUBCONTRACTS FOR COMMERCIAL ITEMS ([DATE])

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